



Public Space Management Request for Proposals

Issued: January 19, 2023

IMPORTANT NOTICE: A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the Contract. Bidders are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below (refer to: Section IX – Letter i).

Designated Contacts for this Procurement:

Primary Contact:	Ralph Volcy
Secondary Contact:	John Discolo
Additional Contacts:	Chastity O'Shei (<i>Pre-Proposal Meeting and Interviews only</i>)

All contacts/inquiries shall be made by email to the following address:

PublicSpaceMgtRFP@esd.ny.gov

This RFP is posted on the Empire State Development website:

<https://esd.ny.gov/doing-business-ny/requests-proposals>

MWBE & SDVOB Subcontractor Interest

New York State certified Minority- and Women-Owned Businesses (MWBEs) and Service Disabled Veteran Owned Businesses (SDVOBs) may request that their firm's contact information be included on a list of MWBE and SDVOB firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on ESD's website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS MWBE or SDVOB certification to PublicSpaceMgtRFP@esd.ny.gov. Nothing prohibits an M/WBE Vendor from proposing as a prime contractor.

Applications must be sent to the designated Dropbox:

<https://www.dropbox.com/request/h4i7OpBJLB4mVB0Re58f>

Submission Deadline: April 20, 2023 at 2:00PM EST



**Erie Canal Harbor
Development
Corporation**

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I. INTRODUCTION

The mission of the Erie Canal Harbor Development Corporation (“ECHDC”), a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”), is to revitalize Western New York’s waterfront and restore economic growth to Buffalo based on the region’s legacy of pride, urban significance and natural beauty.

A. Invitation to Submit Proposals

The ECHDC seeks a partner to manage the visitor’s experience on State-owned and State-managed property at the Outer Harbor and Canalside (“Buffalo Waterfront”) in Buffalo, Erie County, New York. ECHDC seeks proposals for a public/private venture aligned with its mission and specific to the Buffalo Waterfront, demonstrating relevant experience, expertise, programmatic alignment and resources to operate the property and the ability to implement compatible, diverse and equitable, high-quality programs, events, hospitality services, and concessions in collaboration with ECHDC.

Proposals submitted in response to this RFP must present limited impacts on the environmental setting and existing uses of the site. Proposals must reflect excellence, professionalism, quality and value in selection and execution of programming and visitor experiences, concession offerings and customer services. ECHDC’s intent is to exercise careful discretion to achieve a sensitive and balanced activation of the Buffalo Waterfront in accordance with the requirements of this RFP and the License.

This RFP will result in the award of a license agreement (“License”) to the successful party (“Operator”). A sample license agreement (“Sample License”) is provided in this RFP. The properties that are subject to the License are defined herein and referred to as the “Licensed Premises.” The License will be in accordance with the terms and conditions set forth in this RFP, the Sample License, ECHDC’s operating requirements, and all applicable laws, rules, regulations and policies.

ECHDC will not consider proposals conditioned on a respondent’s use of additional facilities or resources that are not contemplated in this RFP.

B. License Term

The term of the License will be for a period of seven (7) years commencing April 1, 2024 and expiring on March 31, 2031.

At the end of the 7-year term, the ECHDC shall have the option to enter into one (1) additional 4-year extension. The 4-year extension would expire on March 31, 2035.

The Contract will also include a “Start Up” period from mid-November 2023 to March 31, 2024, allowing the Operator to hire key staff and prepare for the 2024 Summer Season.

II. OVERVIEW

A. Background

For decades Buffalo, New York's waterfront sat desolate and underutilized until 2005, when ECHDC was formed to spearhead Buffalo's waterfront revitalization and reclaim the area as one of the State's premiere placemaking destinations. Millions of dollars in both public and private investment have transformed the foot of Main Street into the year-round, mixed-use development known as Canalside, while additional public dollars have resulted in the opening of 200 acres of the Outer Harbor for public use and enjoyment.

The State's transformation of Canalside and the Outer Harbor have led to further private development along the Buffalo River. Currently, Canalside anchors the northern end of the Buffalo Waterfront while the Outer Harbor and Buffalo Harbor State Park anchor the southern end. This nearly 3-mile stretch of property is the home to a large concentration of restaurants, cultural attractions, marinas, and open space, and is linked by a multi-use trail system, seasonal bike ferry, and recently improved streets.



B. Licensed Premises

Opened to the public in 2008, Canalside features several fully restored facets of the original Erie Canal Harbor including sections of the Canal, the Commercial Slip, Central Wharf boardwalk, and several historic streets and bridges. A year-round attraction that hosts over one million visitors annually, Canalside boasts hundreds of events, festivals, family activities, attractions, historical and cultural programming, art, food, and tours that capitalize on and showcase the diverse assets and resources of Western New York.

Canalside is a 20-acre section of downtown Buffalo bounded on the north by Upper Terrace and Exchange Streets and Perry Boulevard; on the east by Washington Street and Seymour H. Knox III Plaza; on the south by Perry Street and the Buffalo River; and on the west by Erie Street, Marine Drive, and Pearl and Commercial Streets. Canalside's public space ownership is a mix of State and City, while several spaces have been or are currently under private development. The entire area is within the Downtown Pedestrian Transit Mall Special District managed by Buffalo Place, Inc.

Canalside provides various year-round offerings and experiences throughout its public spaces while offering attractions (seasonal boat tours, outdoor roller rink, ice skating rink, carousel, children's museum, and naval park) surrounded by residences, restaurants, and hotels in mixed-use commercial developments including One Canalside, LECOM Harborcenter, and Heritage Point. Canalside is programmed throughout the summer months (Memorial Day to Labor Day), transforms to a roller rink in the fall (currently August to mid-November), and ice skating rink in the winter (late November through February), with over 1 million visitors annually. Canalside is also adjacent to the KeyBank Center, home to the Buffalo Sabres (NHL) and Buffalo Bandits (NLL) and host of national music acts.

The Outer Harbor, across the Buffalo River from Canalside and extending for two miles along the Lake Erie shoreline, is comprised of nearly 200-acres of open spaces, multi-use trails, marinas, bike park/trails, comfort stations and an outdoor, multi-purpose event area. Since 2015 the Outer Harbor has been programmed throughout the summer months (Memorial Day to Labor Day), with a few events occurring in the fringe months. The Outer Harbor attracts hundreds of thousands of visitors annually, with larger crowds attending outdoor concerts, festivals and one-time events.

The State-owned and State-managed properties are more fully described and shown on the Buffalo Waterfront Licensed Premises Map in **Appendix C**.

C. Partnerships

i. Queen City Bike Ferry

In operation since 2011, the Queen City Bike Ferry shuttles passengers between Canalside and the Outer Harbor seven-days-a-week during the Summer season. Although down from its 2015 record of more than 50,000 riders, the ferry carries passengers and bikes across the Buffalo River in approximately 10 minutes. This seasonal connection allows waterfront visitors easy access to all the places, programs, and amenities offered.

The Queen City Bike Ferry is operated by the Hilliman family, who also operate the Spirit of Buffalo, Buffalo River History Tours, and the Buffalo Harbor Excursions from Canalside, through 2025.

ii. Canalside Cultural Attractions

a. Children's Museum, Naval Park and Carousel

The Ralph C. Wilson Jr. Explore & More Children's Museum is a year-round attraction located along the southern edge of the Main Canal. With Buffalo-centric exhibits in over 40,000 GSF across three floors, the Children's Museum is expected to draw over 200,000 annual visitors. The Museum also holds its Touch-A-Truck event at Canalside.

The Buffalo & Erie County Naval and Military Park, located adjacent to Canalside along the Commercial Slip, is open from seven days a week from May through October, and weekends only in April and November. The Naval Park attracts over 70,000 annual visitors.

The Buffalo Heritage Carousel, located along the Central Wharf next to Clinton's Dish, is open from seven days a week from May through September, and weekends only in November. Opened for two seasons, the Carousel drew an average of 50,000 riders annually.

b. 2025 Erie Canal Bicentennial Commemoration

Canalside sits on the historic western terminus of the Erie Canal. In its heyday Buffalo, known as America's "Gateway to the West", was one of the world's greatest business centers, teeming with canal and rail traffic passing from the Atlantic seaboard across the Great Lakes. For much of the 19th century, it was truly an industrious port that bustled with people and goods from all over the world.

The ECHDC aims to share this remarkable history with visitors in a social-recreational context by creating fun, festive, participative, and engaging experiences to help them connect to Buffalo's 200-year-old Erie Canal history and create once-in-a-lifetime memories. Most audiences will likely be familiar with the general history of the Erie Canal and aware that its Western Terminus is in Buffalo. Still, most visitors will not be intimate with Buffalo's storied relationship with it. Consequently, to share the story, the ECHDC envisions providing visitors of all ages, abilities, and backgrounds with multiple pathways and a wide range of experiences to reconnect with a familiar story, engage with new content, and meet visitors where they are in a personal sense.

The ECHDC is currently working with the Buffalo History Museum and local stakeholders, while hiring consultants to develop, fabricate, install and manage three unique visitor experiences during the Summer season in 2025. Additional

focus is expected to result in ancillary programming (musicians, actors, events and festivals) throughout Canalside that year.

While the Operator will not be responsible for the management or cost of the 2025 Erie Canal Bicentennial Commemoration, it is expected that the Operator will fully cooperate in the coordination of the Operator's scheduled programming and the Bicentennial scheduled programming to ensure a successful Summer.

It is anticipated that several site amenities (still to be determined but likely a portable stage, shipping containers, etc.) will be purchased by ECHDC for the Commemoration. The Operator will have use of these amenities after ECHDC is done with them, and is encouraged to deploy them throughout the Buffalo waterfront as necessary to support the public space.

c. Longshed

The Longshed is a multi-use, flexible space located on the Central Wharf at the Commercial Slip. The building, occupied by the Buffalo Maritime Center through April 2024, will be used as part of the 2025 Erie Canal Bicentennial Commemoration. ECHDC will determine the use/tenant of the Longshed after the Bicentennial experience has been removed.

III. SCOPE OF WORK

The Buffalo Waterfront aspires to be a world-class, waterfront destination, and holds incredibly high standards for the quality and management of hospitality services, site programming, food and beverage offerings, amenities and the overall brand. The Operator will be responsible for all of the tasks and sub-tasks described in this Section of the RFP.

While the majority of this work defines "front-of-house" operations, ECHDC recognizes the need for complementary "back-of-house" operations and maintenance services. ECHDC is also currently soliciting for Facilities Management and Grounds Management Contractors who will provide daily, seasonal, and annual operations and maintenance work, as well as capital maintenance throughout the same "Licensed Premises" on the Buffalo Waterfront. The Buffalo Waterfront Facilities Management and Grounds Management scopes of work can be found at <https://esd.ny.gov/doing-business-ny/requests-proposals>.

It is expected that the Operator will work closely with the Facility Management and Grounds Management Contractors and ECHDC to ensure a seamless and high-quality experience for the visitor.

A. Hospitality Services

The Operator will be responsible for staffing the Gateway Building reception desk and providing world-class customer service to Canalside landside visitors, as well as information on Buffalo Waterfront events and attractions. The reception desk staff will also efficiently manage incoming phone calls and emails from visitors, responding in a timely fashion. The Gateway Building will be open to the public from 10am to 7pm Monday through Sunday during Summer, Fall and Winter seasons (refer to Table III-1), with some variance to accommodate the programming schedule.

The Operator will be responsible for staffing the transient boater front office in the Longshed and providing world-class customer service to Canalside waterside visitors, as well as information on Buffalo Waterfront events and attractions. The front office staff will also efficiently manage incoming phone calls and emails from waterside visitors, responding in a timely fashion. The transient boater front office will be open to docked customers from 9am to 5pm Monday through Sunday while docks are in place (May 1st through September 30th).

B. Programming

Since 2010, the ECHDC has programmed various offerings with the goal of providing a wide range of changing activities that appeal to a diversity of visitors, with as many free or low-cost activities as possible to ensure equitable access to the waterfront. The Operator is expected to embrace these guiding principles and continue to celebrate the uniqueness of Western New York through its future offerings.

The Buffalo Waterfront hosts a dense schedule of daily, weekly, and episodic programs to activate the many spaces throughout the year. Canalside enjoys three active seasons (summer, fall and winter) attracting over 1 million visitors annually, while the Outer Harbor locations are primarily programmed in the spring and summer, attracting nearly 250,000 visitors annually.

The Operator will be responsible for managing, coordinating and advertising the programming, at all locations throughout the year, with an aim of maximizing and lengthening visits, and encouraging return visits by the public. Critical to this aim is maintaining and enhancing relationships with its programming partners and sponsors. ECHDC expects the Operator to analyze the programming offerings based on the following, but not limited to; visitor and community response, quality of event or program, marketability, financial impact, and ultimately determine the appropriateness of continuing, further developing, and/or adding new events and/or programs. The Operator is encouraged to annually diversify the programming with new offerings and/or focus areas. The Operator must have a thorough and organized approach to developing, coordinating and supervising programming.

The Operator shall provide additional on-site staff as needed for programming, and to facilitate the use of on-site amenities such as games, fitness equipment, art installations, chairs, benches and/or other items as necessary to ensure customer satisfaction and safety.

The Operator will finalize an *Annual Management Plan*, including Summer seasonal programming and event calendar, by April 1st of each year. The Annual Management Plan will be updated prior to the Fall, Winter and Spring Seasons per Table III-1. The Operator will coordinate events and programming with its event operations department, as well as to plan accordingly to avoid the need to alter programming/event set up, and/or reschedule once the calendar is complete. It is expected that programming and/or event managers will be dedicated solely to the Buffalo Waterfront unless the Operator can demonstrate why it's in ECHDC's interest to share any staff with other off-site properties, and then only if the Operator obtains ECHDC's written approval.

**Table III-1
Buffalo Waterfront Seasons**

Season	Start - End Dates	Annual Management Plan/Updates Due Date
Summer	May 15 th – Labor Day	April 1 st
Fall	Labor Day – October 31 st	August 1 st *
Winter	November 1 st – February 28 th	October 1 st
Spring	March 1 st – May 14 th	<i>If Necessary</i> - February 1 st

- For Roller Skating at Canalside, the related seasonal programming and event calendar shall be due on July 1st

The Operator shall recognize and facilitate all programs that have been contracted through the current operator that are scheduled to take place on or after April 1, 2024. A final list of contracted events occurring after April 1, 2024 will be provided to the successful respondent with the expectation that all such contracts shall be honored in full.

i. Summer

Given the relatively short Summer in Buffalo, residents and visitors can find multiple things to do on any given day in Western New York. Daily, weekly, and episodic programming during the Summer Season has been focused in several key areas that allow visitors to easily identify offerings of interest on the Buffalo Waterfront. The Operator will be responsible to develop "Focus Area" programming that encourages our visitors to explore the entire Buffalo Waterfront through a range of activities at various locations.

It is expected that each of these Focus Areas will have a presenting sponsor. The Operator will be responsible to coordinate with the presenting sponsor during program development to ensure the expectations of ECHDC and the sponsor are met to the satisfaction of both parties.

The Operator is responsible to develop a highly programmed, 14-week Summer Season that starts on the Friday before Memorial Day in May and ends on Labor Day Monday in September.

a. Family/Kid Friendly

This focus area will provide families and children with a range of activities and hands-on experiences by partnering with the Children’s Museum and Carousel, as well as other institutions (i.e., Buffalo Zoo, Science Center, Public Library and Girl scouts) and local vendors (i.e., Hawk Creek, Reptile Guy, Bubble Man, etc.). The designations of days or times, like “Family Fridays” or “Lunch on the Lawn”, to aggregate offerings into a larger experience is encouraged. Including Third-Party Events (i.e., Architects of Air, Rubber Duck, etc.) for this focus area is also highly encouraged.

This focus area will also promote the many free or low-cost offerings that are available daily throughout the Summer. These items include the Beach at Canalside, paddleboats on the Main Canal, caricature portraits along the boardwalk, the tot track at Lakeside, and riding the Bike Ferry.

A “Family Fun Day” itinerary shall also be developed for the website to highlight different locations, amenities and low-cost options that a family could enjoy. Itineraries should provide options for children with disabilities.

b. Health & Wellness

This focus area will provide physical, both active and passive, and mental health and wellness classes and offerings on a regular basis. Most on-site classes are offered after 5:00 pm on weekdays and during the morning or evening on weekends. Virtual fitness classes have been offered the past few years as well.

This focus area will also promote the many free or low-cost offerings that are available daily throughout the Summer. For active recreation on solid ground, these items include the 4-mile network of multi-use paved trails for running or rollerblading, off-road biking trails and a skills loop. For those looking to get on the water, kayaking, stand-up paddleboards, and water bikes are available. And for those looking for passive recreation options, sunset watching, walks along the shoreline or boardwalk, and relaxing in an Adirondack chair.

The creation of running clubs, bike park meet-ups, and volleyball leagues at the Outer Harbor is encouraged. Including Third-Party Events (i.e., SABAH Kickstock, Health & Wellness Festival, Lantern Festival, etc.) for this focus area is also highly encouraged.

An “Exercise Enthusiast” itinerary shall also be developed for the website to highlight different locations, amenities and classes that a fitness-focused participant could enjoy.

c. History & Culture

This focus area will provide a range of activities and experiences by partnering with the Naval Park Museum and Longshed tenant, as well as other institutions (i.e., Buffalo History Museum and Public Library) and local vendors (i.e., Buffalo River History Tours, Young Audiences of WNY, Explore Buffalo, etc.). Including Third-Party Events (i.e., Maritime Festival, Pride, etc.) and Festivals (i.e, Irish, Indian and Asian, etc.) for this focus area is also highly encouraged.

This focus area will also promote the unique culture of Buffalo and Western New York by introducing programs, foods and other offerings that let visitors know the Story of Buffalo.

An “History Buff” itinerary shall also be developed for the website to highlight different locations, stories, ethnic groups and personalities that that impacted the development of the waterfront and the City.

As described in **Section II.C.ii.b** of the RFP, the Erie Canal Bicentennial Commemoration throughout the Summer and Fall of 2025 at Canalside will also provide a range of activities and experiences that could be extended in future years under this focus area. The Seneca Chief, a replica of the original packet boat on the Erie Canal, is expected to dock in the Commercial Slip through 2029.

d. Music & Arts

This focus area will provide a range of activities and experiences by partnering with local institutions (i.e., Buffalo AKG Art Museum, Ashford Hollow Foundation, Hallwalls, etc.), artists, comedians, and musicians. These smaller scale collaborations should not be combined with the larger Concert Series but should emphasize a diversity of local talent.

This focus area will also include seasonal market offerings, Third-Party events (i.e., Jack Craft Fair, Lantern Festival, Fashion Shows, etc.), a weekly movie series, weekend buskers, acoustic music series at various locations, and seasonal art installations within State-owned facilities or at various locations on the site.

A “Local Music Series” shall also be developed for the website to highlight different locations and local musicians that could be enjoyed during the season.

e. Nature

This focus area will provide a range of activities and experiences by partnering with local institutions (i.e., Tifft Nature Preserve, Buffalo Science Museum, etc.), groups and individuals. These smaller scale collaborations should not be combined with the larger events such as solar eclipses, solstices, bird migrations, and fishing days, etc.

This focus area will also promote the many free or low-cost offerings that are available daily throughout the Summer. These items include the sunset watching, forest bathing, bird watching, and fishing at the Outer Harbor.

An “Nature Enthusiast” itinerary shall also be developed for the website to highlight different locations, amenities and tours that a nature-focused participant could enjoy.

ii. Fall

Programming during the Fall Season has primarily focused on the *Roller Rink at Canalside*, with a few events in September at the Outer Harbor. Drawing over 7,000 skaters in its second season (a 17% increase from the 6,000 in 2021), the Roller Rink is the centerpiece of the Fall season.

While the Roller Rink shares the same dasher board system as the *Ice at Canalside*, the skating area is reduced to approximately one-third of the overall area. The reduced skating area provides additional space for food and beverage, and other rink-level programming. The Operator is responsible to develop a highly programmed, 6-week Fall Season that starts on the second Friday of September and ends on the last Sunday in October.

The Operator is responsible to manage all Roller Rink front-of-house operations, including but not limited to, customer service, ticketing and point of sale, skate rental, skate rink guards, and provide adequate staffing to handle these operations. The Operator is also responsible to purchase and repair skates as necessary, fit-out and setup a skate rental facility, and operate the lighting, audio and public announcement system.

Public skating must be offered at least four days a week including Friday, Saturday and Sunday, with Learn-to-Skate classes offered on one weekend morning. Public skating must also be offered on Columbus/Indigenous Peoples Day. Successful themed skate nights typically occur on Friday nights and should continue, while leagues, parties and corporate events are encouraged.

The Operator is responsible to manage additional offerings and food and beverage options on weekends. With the relative newness of the Fall season at Canalside, the public has

been offering some ideas that ECHDC would like to be considered, including pop-up basketball or pickleball courts, mini-golf course(s), turf areas, beer garden, lounge seating, birthday party zones, movies, and a DJ Booth.

Finally, extension of the Summer's Focus Area programming should also be considered.

Note: *The Facilities Management team is responsible to drain and clean the Main Canal, as well as install the dasher boards and ramps, over a 10-day period which begins the Tuesday after Labor Day. The Operator is responsible for the installation of dasher board advertisements, with the oversight of the Facility Management Team. The Operator is also responsible for the daily cleaning of the rink surface during the season.*

The ECHDC will consider Fall programming at Canalside that does NOT include the Roller Rink. If the Operator chooses, it should describe an alternative, highly programmed 6-week Fall Season at Canalside.

iii. Winter

Programming during the Winter Season is focused on the *Ice at Canalside*, one of Western New York's premiere winter attractions. Drawing an annual average on-ice attendance of 60,000 since 2017, the Ice at Canalside is the centerpiece of downtown Buffalo's Winter season.

The Operator is responsible to develop a highly programmed, 14-week Winter Season that starts on the Friday after Thanksgiving in November and ends on the last Sunday in February.

The Operator is responsible to manage all Ice Rink front-of-house operations, including but not limited to, customer service, ticketing and point of sale, on-line reservations, skate rental, locker rental, skate rink guards, curling, ice bowling, bumper cars, and provide adequate staffing to handle these operations and assist customers on the ice. The Operator is also responsible to purchase and repair skates, curling and bowling equipment, and bumper cars as necessary, fit-out and setup a skate rental facility, and operate the lighting, audio and public announcement system.

Public skating must be offered at least four days a week including Friday, Saturday and Sunday, with Learn-to-Skate classes offered on one weekend morning. Public skating must also be offered on Dr. Martin Luther King Day and Presidents Day, while the Ice Rink can be closed on Christmas Day and New Year's Day. Successful themed skate nights typically occur on Friday nights and should continue, while leagues, parties and corporate events are encouraged.

The Operator will be expected to work closely with the Facilities Management staff and on-ice programmers when determining and communicating to the public that the ice will

need to be cleared and resurfaced, or any delay in opening the facility due to weather or unforeseen circumstances; as well as informing the public on any special events taking place in and around the ice rink.

Note: *The Facilities Management team is responsible to modify the dasher boards and/or ramps. The Operator is responsible for the installation of vinyl surface and dasher board advertisements, with the oversight of the Facilities Management Team. The Operator is also responsible for the creation or “building” of the ice surface at the start of the season, daily ice maintenance (i.e. drive the Zamboni) and snow removal during the season, and the removal or “melting” of the ice surface at the end of the Season.*

While the Facilities Manager is responsible for snow removal outside of the rink, the Operator and Facilities Manager will communicate and coordinate snow removal from the rink surface, surrounding towpaths, bridges, and rental facility areas.

iv. Spring

Programming during the Spring Season is the lightest of the year and focused primarily on charity walks/runs (see Third-Party Events below) at Canalside and the Outer Harbor. During this period, the bulk of capital maintenance and repairs occur, as well as preparing the property for the heavily programmed Summer Season.

v. Concert Series

The Buffalo Waterfront Concert Series will occur at the new Lakeside Stage at the Outer Harbor (as fully described in **Appendix C** of this RFP, this location will be completed in 2023 and available for activation beginning on April 1, 2024).

The Operator will be required to host at least ten (10) concerts during the Summer and Fall Seasons. All concerts, whether produced in-house or through a third-party, shall be considered part of the Concert Series. The concerts should have broad appeal, showcase a range of musical genres, and cater to diverse audiences.

The Operator will offer tiered ticket pricing, whenever the artist allows, to appeal to a range of customers, provide various concert-going experiences, and increase the likelihood of financial success. It is expected that each concert will include, at a minimum, general admission, special access (i.e., VIP, early access, and/or backstage pass), and targeted discount (i.e., students, members of the military) tickets.

The Operator will be responsible to provide all concert infrastructure that is not available at the site, surrounding parking lots, and/or entrances. This includes, but is not limited to, audio/visual equipment, food and beverage, ancillary power, wi-fi, wayfinding/site signage,

security and crowd control measures, lighting, parking management, and the individual artist's back-of house/greenroom or other requirements.

The Operator will provide staff to manage the planning process and supervise the day of the concert and enforce compliance with logistics, ticketing, security, and traffic plans, including but not limited to, pre- and post-concert site condition walkthroughs as necessary.

The Operator will be accountable for any damage to the site as a result of the Concert Series, load in, or load out. The Operator will be required to make site repairs after each concert, as well as at the end of the season, to ensure the site is ready for the following concert or season, respectively. All repairs will require coordination with the Facilities Management and Grounds Management Contractors, and ECHDC's written approval prior to work commencing.

The Operator will be required to brand the Concert Series, including the development of a name and logo, and all related promotional materials. The Concert Series brand will require ECHDC's written approval prior to implementing.

vi. Third-Party Events

Many of the Buffalo Waterfront events are produced by third parties. These events generally fall into four categories; (1) festivals (such as the Pride Festival or Irish Festival); (2) large-scale events (such as Thunder over the Buffalo Waterfront Air Show or Queen City Vintage Flea Market); (3) small-scale events (such as wedding ceremonies and company picnics); and (4) Charity walks/runs (such as Walk MS and March for Dimes).

The Operator will be responsible for evaluating event logistics and shaping of event proposals to provide maximum benefit to, and ensure the brand of, the Buffalo Waterfront. ECHDC expects the Operator to maintain public access by virtue of limiting the closing of streets or pathways, allowing for public access along the water's edge, and limiting the number of events that close the entire site to the public.

The Operator will assist with managing applications, approvals and necessary permitting, including but not limited to ensuring events obtain all necessary City of Buffalo Special Event Permits.

The Operator will provide staff to manage the planning process and supervise the day of the event and enforce compliance with the approved logistics plan, including but not limited to, pre and post-event site condition walkthroughs. ECHDC expects the Operator to hold event producers accountable for any damage to the site as a result of their event, load in, or load out.

Finally, the Operator will negotiate and collect appropriate site fees and production support fees (including but not limited to site fee, security, labor, restroom rental, cleaning, etc.) that cover the cost of the production.

If a third-party event is proposed after the Event Calendar has been completed, ECHDC expects the Operator to evaluate the various impacts of the event (including but not limited to the financial, operational, regularly scheduled programming and event impacts) and propose a recommendation to ECHDC.

The Operator shall make ECHDC aware of potential third-party events as soon as the Operator has enough information to discuss. ECHDC shall have the right reject any third-party event.

C. Food, Beverage and Merchandise

The Operator is responsible to develop, manage, stock and staff a new, boutique retail location in the Gateway Building at Canalside. This 600 SF space (with an additional 200 SF of storage space) will open to the public in May 2026 and should provide a range of Buffalo Waterfront and Buffalo-centric merchandise, as well as drink and snack food takeaway options. With consultation from the Buffalo AKG Art Museum and artist, the Operator will develop and sell an exclusive line of Shark Girl merchandise at this location. The development of other exclusive products (i.e., beer, ice cream, dog bones, mustard, etc.) or collaborations, created with local companies, is encouraged.

The Operator shall suggest up to three names for this retail location. ECHDC shall select the name, and once announced, own the rights to the name during and after the contract.

Since 2011, the Buffalo Waterfront has seen an increasing variety of food and beverage offerings. Beginning with Clinton's Dish to the upcoming new restaurant at Wilkeson Pointe, eating and drinking at the water's edge is an important part of the overall customer experience.

Included in the *Annual Management Plan*, the Operator is responsible to develop an annual food and beverage program for the Buffalo Waterfront, including menus, pricing, and staffing for the Seasonal Permanent and Seasonal Temporary locations, including the Concert Series. Seasonal Permanent locations shall operate seven days a week during their primary season, while Seasonal Temporary locations shall operate in parallel with seasonal operations. Hours shall be determined by the Operator and ECHDC.

The Operator shall collaborate in good faith with New York's Taste NY initiative. Taste NY was launched in 2013 to promote New York's food and beverage heritage and related industries. To the extent feasible, the Operator shall promote and incorporate the core principles of the Taste NY initiative in any food or retail concessions.

The State-owned property along the Buffalo Waterfront has been established as a no smoking area. ECHDC prohibits the smoking of cannabis, tobacco or any other product, consistent with the definition of tobacco products used in the Food and Drug Administration's regulations at 21 CFR 1100, 1140 and 1143. This prohibition includes electronic cigarettes (e-cigarettes), vaporizers, vape-pens, vaping, hookah pens, e-pipes and all other electronic nicotine delivery systems or vapes tobacco products. In addition, New York State passed a Public Health Law, effective October 13, 2022, prohibiting smoking cannabis and tobacco in public outdoor spaces.

The Operator is responsible to obtain a liquor license for Seasonal Permanent and Seasonal Temporary locations, including the Concert Series or other Programming.

i. Seasonal Permanent

The ECHDC will be constructing a new permanent restaurant at Wilkeson Pointe that the Operator shall manage, stock and staff during the Summer season and into the Fall season (on weekends, weather permitting). A full description of the Wilkeson Pointe improvements, available on April 1, 2025, can be found in **Appendix C**.

The Operator shall suggest up to three names for this food and beverage location, based on their menu, waterfront history, and/or the location itself. ECHDC shall select the name, and once announced, own the rights to the name during and after the contract.

The Operator shall have use of the provided restaurant equipment and shall be responsible to maintain, service and/or replace the equipment as necessary. The Operator shall purchase additional restaurant equipment as necessary to prepare all menu items.

Note: At this time, the City of Buffalo expects to operate Clinton's Dish at Canalside.

ii. Seasonal Temporary

The ECHDC owns several shipping containers and/or sheds that have been modified to provide light food and beverage menu options. A shed is located at the Queen City Bike Ferry landing while containers are currently at the Lakeside Bike Park and the Main Canal. A vending machine is also currently located at the Bike Park.

The Operator is responsible to provide and maintain vending machines at the Lakeside Bike Park, Bell Slip and Queen City Bike Ferry landing. Vending machines may also be located at Wilkeson Pointe.

At Canalside, the number of area restaurants reduces the need for seasonal temporary offerings in the Summer season. However, seasonal temporary offerings located at the Main Canal in the Fall and Winter seasons support the overall customer experience.

The Operator is responsible to provide Seasonal Temporary offerings during the Fall and Winter at the Main Canal. This can be satisfied with outside vendors or in-house operations.

iii. Concert Series

The Operator is encouraged to supplement food and beverage offerings with food trucks and/or other pop-up alternatives.

iv. Food Carts, Trucks and Other Pop-Ups

The Operator is encouraged to supplement food and beverage offerings with food carts, trucks and/or other pop-up alternatives throughout the Outer Harbor, at the Concert Series, and at Third-Party Events.

As the number of permanent restaurant offerings at Canalside has increased, the Operator is encouraged to limit supplementary food and beverage offerings within this area.

D. Marketing/Advertising

While visitors embraced the Buffalo Waterfront as a highly enjoyable, year-round destination, continued marketing is crucial to its long-term success. ECHDC is looking for a strong and innovative marketing team that will work to diversify the current marketing efforts and continue to grow the Buffalo Waterfront, Canalside and Outer Harbor location brands.

Included in the *Annual Management Plan*, the Operator will develop a marketing and advertising plan, along with a media buy budget to promote the diverse activities at the Buffalo Waterfront. Advertising in print and electronic media, as well as on billboards and in local magazines is expected. Collaborations with companies that place the Buffalo Waterfront, Canalside and Outer Harbor brands in local stores or other high-traffic locations are encouraged.

The Operator will be responsible to ensure that all marketing efforts unequivocally maintain the integrity and standards of the brand. The Operator will develop and manage all graphics, artwork, and photography related to all marketing efforts including but not limited to advertising; online, print and outdoor media; temporary/seasonal/event on-site signage; and promotional materials.

The Operator shall manage website content, currently at www.buffalowaterfront.com, including but not limited to generating the entire event calendar, ensuring all event information is correct, updating images/homepage banners and visitor experience information.

Note: The www.buffalowaterfront.com website is currently hosted by a third-party consultant by virtue of a separate contract with ECHDC. It is expected that ECHDC will refresh its website under a similar arrangement in 2024, so that it is ready for launch by April 1, 2025.

The Operator shall also manage and further develop social media platforms, including but not limited to Facebook, Twitter, Instagram and Snapchat.

The Operator shall coordinate with ECHDC and Empire State Development's public affairs office on all public relations including but not limited to press releases, media releases, press events, and media interviews. The Operator shall also work with Empire State Development to conduct an annual minority and women-owned business outreach event.

Please note that ECHDC will retain ownership of all marketing and advertising collateral produced over the course of the contract.

E. Sponsorship

Sponsorships play a key role at the Buffalo Waterfront - not only as an income stream, but also as a platform to showcase and align the brand with strategic corporate partnerships and collaborations. Canalside, the Outer Harbor and current Concert Series have a variety of sponsorship agreements and opportunities including, but not limited to, events, physical site assets and amenities, naming rights, pouring rights, dashboards, and category exclusive opportunities. Collaborations with companies that place the Buffalo Waterfront, Canalside and Outer Harbor brands in on their websites and social media feeds, in local stores or other high-traffic locations are encouraged.

In addition to experiential marketing techniques, the Operator shall provide extensive corporate sales and sponsorship activation experience that will further develop the current sponsorship relationships and leverage relationships to reach broader audiences, but also have the aptitude to bring brands to the Buffalo Waterfront that are new to the region. As with programming and events, the Operator shall evaluate sponsorship relationships to ensure the relationship is a "great fit" for the brand and ECHDC. The Operator will embrace ECHDC's high standards for sponsorship activation; understand the importance of maintaining the Buffalo Waterfront brand while not over commercializing this public space; and present innovative and creative activation proposals.

ECHDC shall have the right to review and must approve of all sponsorship agreements and activations in advance. The ECHDC will not approve sponsorships of tobacco or cannabis companies or products.

i. Summer Season - Focus Areas

As noted above, the Operator will be responsible to develop “Focus Area” programming during the Summer Season that encourages our visitors to explore the entire Buffalo Waterfront through a range of activities at various locations.

It is expected that each of these Focus Areas will have a presenting sponsor. The Operator will be responsible to coordinate with the presenting sponsor during program development to ensure the expectations of ECHDC and the sponsor are met to the satisfaction of both parties. The sponsorship package will be heavily focused on experiential programming, the website and social media, but could include some physical assets, and seasonal or temporary signage.

ii. Fall Season

It is expected that the Fall Season will have a presenting sponsor. The Operator will be responsible to coordinate with the presenting sponsor during program development to ensure the expectations of ECHDC and the sponsor are met to the satisfaction of both parties. The sponsorship package will be heavily focused on the *Roller Rink at Canalside* and related experiential programming (or proposed alternative per **Section III.B.ii** of this RFP), the website and social media, but could include some physical assets, and seasonal or temporary signage.

iii. Winter Season

It is expected that the Winter Season will have a presenting sponsor. The Operator will be responsible to coordinate with the presenting sponsor during program development to ensure the expectations of ECHDC and the sponsor are met to the satisfaction of both parties. The sponsorship package will be exclusively focused on the *Ice at Canalside* and related experiential programming, the website and social media, but could include some physical assets, and seasonal or temporary signage.

iv. Concert Series

It is expected that the Concert Series will have a presenting sponsor. The sponsorship package will be exclusively focused on the Concert Series and related amenities, the website and social media, but could include some physical assets, and seasonal or temporary signage. Additional sponsorship packages could be developed specific to VIP zones or other spaces within the site.

v. Food & Beverage

Depending on the menu offerings, it is expected that a sponsorship agreement or “pouring rights” will be negotiated with one or more distributors for both alcoholic and non-alcoholic beverages.

vi. Physical Assets

ECHDC retains the sole right to negotiating naming rights and/or sponsorship agreements related to State-owned physical assets, including the property, improvements (i.e., canals, stage, lawns, trails, docks, etc.), buildings, and place names (i.e., Canalside, Wilkeson Pointe, Terminal B, etc.).

ECHDC will allow the Operator to negotiate sponsorship agreements that include the use of site signage, furniture, or other miscellaneous seasonal and/or temporary amenities.

ECHDC shall have the right to review and must approve of all sponsorship agreements and activations in advance.

vii. Miscellaneous

Any sponsorships negotiated by the Operator shall not overlap, interfere with, or negatively impact sponsorships previously negotiated by ECHDC.

The Operator shall be obligated to assist ECHDC with fulfilling the terms of the sponsorship agreements negotiated by ECHDC (i.e., include in social media posts, on the website, and in print materials).

Experiential programming or activations shall be respectful of their setting in a public space, be brand related and tasteful. Experiential programming or activations shall not be on-site “commercials” or “sales opportunities” for the sponsor or brand.

F. Operations & Maintenance

The Operator is responsible for all cleaning/janitorial, waste management and pest control, repairs/restoration, and maintenance associated with Hospitality Services, Programming, Food and Beverage, and Merchandise managed by the Operator. Daily tasks include, but are not limited to, cleaning, resetting of furniture, fixtures and equipment, as well as seasonal transitions, which include but are not limited to, installation/removal and storage of furniture, temporary signage, bike racks, seasonal lighting, security fencing, and repairs/restoration.

i. Permits, Fees and Licenses

The Operator shall be responsible to obtain all permits, fees, and licenses (including State Liquor Authority license(s)) required to operate the Property as described in this RFP.

ii. Programming Security

The Operator shall provide adequate security to ensure employee and customer safety for all Programming undertaken. The Operator shall coordinate with City police, fire and other emergency services as necessary.

iii. Signage

The Operator is responsible for all hospitality, programming, food and beverage, and merchandise signage necessary. The Operator shall develop a standard set of programming signs (i.e., sandwich boards or A-frames, flags, pop-up tents, etc.), using ECHDC's Brand Standards and logos, sponsorship logos/taglines, and describing materials and dimensions.

These temporary programming signs are intended for customer awareness, wayfinding and on-site promotion during the event.

Permanent signage related to hospitality, programming, food and beverage, and merchandise locations shall be approved by ECHDC prior to installation.

Seasonal signage related to hospitality, programming, food and beverage, and merchandise locations shall be approved by ECHDC prior to installation.

Any signage required by sponsorship agreements shall be approved by ECHDC prior to installation, regardless of whether its permanent, seasonal or temporary.

iv. Waste Management and Pest Control

The Operator shall be responsible for waste management, recycling and refuse collection during and after all Programming, as well as at Hospitality, Food and Beverage, and Merchandise locations. Emptying of waste receptacles, sweeping, removal of litter is to be monitored throughout the day and removed regularly to avoid overflowing receptables.

The Operator shall be responsible for daily and seasonal pest control services at Hospitality, Food and Beverage, and Merchandise locations. As part of the daily custodial

services, these locations and any related furnishings shall be cleared of cobwebs, spider, bee and hornet nests. Pest control services are to be used for periodic services to prevent and/or remove nesting insects or intrusive animals.

The Operator shall coordinate with Facilities Management and Grounds Management as necessary.

v. Music, Lighting, Decorations

The current sound system was installed at Canalside in December 2022. The Operator shall provide “background” music at the Main Canal throughout the year and event specific music, announcements, or other sounds during programming.

The Operator shall provide Seasonal and Event lighting and decorations in keeping with the season, Buffalo Waterfront brand and color standards.

All music, lighting and decorations shall be approved by ECHDC.

vi. Site Utilities

Municipal and private utilities are available at the Licensed Premises. The Operator is expected to supplement site utilities, including internet services, as necessary to provide the scope of services identified in the RFP, and at no cost to ECHDC.

The ECHDC will pay utility bills for water, electric, and gas at the Licensed Premises.

G. Management & Staffing

As part of the *Annual Management Plan*, the Operator will provide adequate staffing and management oversight to ensure that all services are delivered consistent with the scope of work and expectations contained in this RFP. Management services shall include financial tracking, staffing fulfillment analysis, sourcing, supervising, and evaluating current service delivery methods to continually improve quality, customer service, and performance to satisfy the RFP requirements.

The Operator will be responsible for the effective tracking of revenue sources. The Operator will also be responsible for the timely payment of all expenses related to staffing, outside vendors and service contracts, materials and supplies required for operations, cleaning, fuels, chemicals, etc.

The Operator will provide monthly and year-to-date financial and operational reports with breakdown of all revenues and expenses. The Operator will provide ECHDC with an annual, third-party financial audit by June 30th of each year.

Staff will be clean, courteous, efficient, and neat in appearance at all times and committed to offering the highest degree of customer service.

i. Orientation/Training

The Operator is responsible to train all staff, including seasonal part-time employees, in customer-service, point-of-sale systems, and work tasks assigned.

ii. Uniforms

The Operator shall provide all staff members with uniforms suitable for seasonal weather conditions. Uniforms shall be in keeping with the Buffalo Waterfront brand, color standards and approved by ECHDC.

IV. SCHEDULE OF DATES

It is anticipated that a contract will be awarded in response to this RFP based on the following schedule:

Release of RFP	January 19, 2023
Pre-bid meeting (if applicable)	February 10, 2023
Deadline for Submission of Questions	February 24, 2023
Deadline for ESD to Respond to Questions	March 9, 2023
Submission of Proposals (date and time)	April 20, 2023 by 2:00pm EST
Interviews (if necessary)	Week of June 12, 2023
Announcement of Successful Bidder	October 2023
Anticipated Contract Start Date	November 15, 2023

The Pre-bid Meeting will begin at the Children’s Museum loading area (on Marine Drive, just east of Commercial/Pearl Street). This Meeting will conclude with a tour of Canalside followed by a tour of the Outer Harbor.

Please note, the Corporation reserves the right to change any of the dates stated in this RFP.

V. SELECTION CRITERIA

Every respondent (“Bidder”) to this RFP should submit a proposal which clearly and concisely provides all of the information requested. Emphasis should be concentrated on conformance to the RFP instructions and requirements, as well as completeness and clarity in its proposal response. The Bidder is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

ECHDC reserves the right to make any and all decisions regarding the selection of proposals submitted, as well as the capacity to consider proposals received after the deadline.

General Proposal Requirements

The selected Public Space Management team should be proficient and have demonstrated experience in projects of a similar nature. In evaluating proposals submitted pursuant to this request; the ECHDC places high value on the following factors, not necessarily in order of importance:

- Approach in methodology with respect to the scope of services that demonstrates maximum comprehension of and ability to provide such services;
- Commitment of executives to lead the team and devote time to the project;
- Experience of staff being assigned to the project;
- Quality of work product as demonstrated in submitted work samples of past projects;
- Ability of the Operator to identify sub-consultants with the necessary qualifications for a project of this type.
- Conformity with or exceeding applicable ECHDC policies noted herein, including specific policies relating to non-discrimination and affirmative action subcontracting goals.
- Revenue Plan.

Selection Process

Final selection will be based on the Proposal score (100 points total) and the Interview Performance score. The ECHDC reserves the right to:

- Seek clarification and revisions of proposals
- Seek a final and best offer from those firms short-listed.
- Make an award under the RFP in whole or in part.
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring full and complete

understanding of an offeror's proposal and/or to determine an offeror's compliance with the requirements for the solicitation.

- Make revisions to the scope of work after contract award to ensure that the Project is completed.

Selection for interviews will be based on an independent evaluation of the submitted proposals using the factors listed below. Selection for interviews shall be based on "best value", made in accordance with the following evaluation criteria and weights as follows:

- Experience and qualifications of the proposed Consultant team – 15 points;
- Experience and qualifications of the proposed Staff – 20 points;
- Project Plan and Approach – 35 points;
- Revenue Plan – 25 points;
- Diversity Practices* – 5 points

It is expected that a maximum of three (3) applicants will be selected, or 'short-listed' for interviews. 'Short-Listed' applicants will be notified by close of business on April 28, 2023. ECHDC reserves the right to forego the interview phase based on the proposal evaluations.

Diversity Practices (5 pts)

ESD's Office of Contractor and Supplier Diversity will score each application for Diversity practices using a Diversity Practices Scoring Matrix. Up to 5 points will be awarded based upon the contents of the Diversity Practices Questionnaire **Appendix B**, submitted by each Respondent to the RFP.

VI. SUBMISSION OF PROPOSALS

Every respondent to this RFP ("Bidder") should submit a proposal which clearly and concisely provides all of the information requested. Emphasis should be concentrated on conformance to the RFP instructions and requirements, as well as completeness and clarity in its proposal response. The Bidder is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

A. Technical Proposal

The purpose of the Technical Proposal is to provide Bidders with an opportunity to demonstrate their qualifications, competence, and capacity to undertake the engagement described herein, in a manner which complies with applicable laws and regulations, and the requirements of the RFP.

Below is a listing of the technical information to be provided by the Bidder. No information is required beyond what is specifically requested. The Corporation requests that all Technical Proposals be bound and organized with dividers identified to match the specific information requested below:

i. Table of Content

The Table of Contents should clearly identify the location of all material within the proposal by section and page number.

ii. Firm Experience and Qualifications

The Bidder should demonstrate extensive experience working in urban and waterfront environments with heavy pedestrian usage and strong systems in place to manage the scope of work in the RFP.

If the Bidder consists of more than one firm, the Bidder should clearly delineate the scope of work between team members.

If the Bidder proposes a third-party to operate the permanent food and beverage facility at Wilkeson Pointe and/or other temporary facilities, the Bidder should clearly identify the restaurant and/or ownership group.

The Bidder should demonstrate extensive experience managing outdoor ice rinks and programming in a cold-weather climate.

The Bidder should demonstrate extensive experience managing concerts, festivals, and other third-party events exceeding 5,000 attendees.

If the Bidder plans to use a third-party for talent retention for the Concert Series, the Bidder should clearly identify the company and/or promoter(s) it plans to work with.

Information provided by references may be used by the Corporation for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Bidder to the client during the engagement. The Corporation reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what the Corporation deems to be the most effective and efficient manner.

iii. Staff Experience and Qualifications

The Bidder should demonstrate that the staff proposed have the knowledge and ability to perform the services described in this RFP.

The Bidder should identify senior management staff, including but not limited to General Manager, Programming Manager, Food & Beverage Manager, Marketing Manager, and Sales Manager that will be assigned to this contract, including if these employees currently live in Western New York or will be relocated from another location.

The Bidder should demonstrate that staff have the local knowledge, experience and ability to develop sponsorship deals and collaborations that will strengthen all brands involved.

Information provided by references may be used for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Bidder to the client during the engagement.

iv. Management Plan and Approach

The Bidder should demonstrate their competence and capacity to undertake the services described in this RFP by providing the following:

- A statement explaining the Bidder's Public Space Management philosophy
- A description of how the Bidder would work with ECHDC
- A description of how the Bidder intends to address the scope of services set forth in this RFP, including key sub-consultants for food & beverage, ice management, and concert series promoter.
- An outline of the Bidders' Annual Management Plan (refer to **Section III.G**)
- A draft of the Concert Series brand (refer to **Section III.B.v**)

v. Revenue Plan

The Bidder should complete the Revenue Share Workbook in **Appendix I** of this RFP. The Workbook allows the Operator to estimate the first five (5) years of projected Income and Deductible Expenses (see below), and provide the Bidder's financial offer, including Base Fee, Revenue Sharing Percentages, Ticket Fees and Third-Party Concert Fees.

The Base Fee will increase each year by a minimum of 2%. Revenue Sharing Percentages, Ticket Fees and Third-Party Concert Fees shall remain in place for the Term.

The Bidder should provide a written narrative in this section of their Proposal listing the Fees and Percentages, as well as explaining any assumptions made when filling in the Revenue Share Workbook.

Deductible Expenses

Hospitality Services, as described in Section III.A of this RFP, will be considered a deductible expense each year during the Term. The total annual cost to provide Hospitality Services should be fully explained in this section of the Proposal and included in the Revenue Share Workbook.

FY2024 Start-Up Costs will be considered a deductible expense in FY2025 only. Start-Up Costs will include senior management staff wages between November 15, 2023 and March 31, 2024. Wages will be based on a 40-hour work week and not include any overtime. The total cost to provide FY2024 Start-Up Costs should be fully explained in this section of the Proposal and included in the Revenue Share Workbook.

Hospitality Services and FY2024 Start-Up Costs will be deducted from the Income prior to calculating the Revenue Share of Other Revenue.

vi. Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Bidders is practical, feasible, and appropriate. Accordingly, Bidders should provide a completed Diversity Practices Questionnaire.

B. Administrative Proposal

Schedule A (found in Appendix A) of this RFP states standard requirements that must be included in every contract entered into with the Corporation. The successful Bidder must agree to abide by these requirements and provide any information requested by the Corporation in connection with these requirements. Accordingly, Bidders should complete and submit the items listed below, in the order in which they are listed. Failure to submit any of the requirements below may result in the rejection of a Bidder's proposal.

- i. <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>, submit with proposal
- ii. [State Finance Law §§139-j and 139-k forms](#), submit with proposal

- iii. [Vendor Responsibility Questionnaire](#), submit with proposal or submit online (and include copy of submitted form with proposal)
- iv. <https://esd.ny.gov/sites/default/files/IranDivestmentActLanguage-corp-info.pdf>, submit with proposal
- v. <https://esd.ny.gov/sites/default/files/EO16-certification.pdf>
- vi. <https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf>
- vii. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
 - o Form OCSD-1: <https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement>
 - o Form OCSD-2: <https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan>
 - o Form OCSD-3: <https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report>
- viii. [Encouraging the Use of NYS Businesses in Contract Performance Form](#), submit with proposal
- ix. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#), submit with proposal
- x. [W-9 Form](#), submit with proposal

Additional information about these items, and ESD's procurement requirements, can be found in **Section IX** of this RFP ("Contractual Requirements").

Submission of a Complete Two-Part Proposal

Bidders submitting a proposal are indicating their acceptance of the conditions in this RFP. Submission of proposals in a manner other than as described in these instructions (e.g., facsimile, hardcopies, emails) will not be accepted. When submitting each proposal, Bidders must comply with the following: Upload the main folder to the specific Dropbox:

<https://www.dropbox.com/request/h4i7OpBJLB4mVB0Re58f>

Proper format: Please create a folder with company name – RFA title – date of Submission.

example: **VVSS, Inc. – Public Space Mgt. Services – 04.20.23**

Included in that main folder should be two sub-folders, one for the Administrative Proposal and one for the Technical Proposal. The main folder should be uploaded to the Dropbox by choosing the following option: "Add Files → folders from computer". All documents in the folders should be properly labeled.

Late proposals will not be considered for award.

VII. QUESTIONS

Questions or requests for clarification regarding the RFP should be submitted via email, citing the RFP page and section in accordance with the schedule in Section IV (Schedule of Dates) to

PublicSpaceMgtRFP@esd.ny.gov. Questions will not be accepted orally and any question received after the deadline may not be answered. The comprehensive list of questions/requests for clarifications and the official responses will be posted with this RFP.

VIII. GENERAL PROVISIONS

The issuance of this RFP and the submission of a response by a Bidder or the acceptance of such a response by ESD does not obligate ESD in any manner. ESD reserves the right to:

1. amend, modify or withdraw this RFP;
2. revise any requirement of this RFP;
3. require supplemental statements or information from any responsible party;
4. accept or reject any or all responses hereto;
5. extend the deadline for submission of responses hereto;
6. negotiate potential contract terms with any Bidder;
7. communicate with any Bidder to correct and/or clarify responses which do not conform to the instructions contained herein;
8. cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; and
9. extend the term of any agreement on terms consistent with this RFP.

ESD may exercise the foregoing rights at any time without notice and without liability to any responding firm or any other party for its expenses incurred in preparation of responses hereto or otherwise. All costs associated with responding to this RFP will be at the sole cost and expense of the Bidder.

All information submitted in response to this RFP is subject to the Freedom of Information Law ("FOIL"), which generally mandates the disclosure of documents in the possession of ESD upon the request of any person unless the content of the document falls under a specific exemption to disclosure. In addition, Proposals may be discussed at meetings of the ESD Directors, which meetings are subject to the Open Meetings Law.

ESD reserves the right, in its sole discretion, to retain and use all the materials and information, and the ideas and suggestions therein, submitted in response to this solicitation (collectively, the "Response Information") for any purpose. By submitting a Proposal, each Respondent waives any and all claims against ESD relating to ESD's retention or use of the Response Information.

Required Approvals

The awarded contract, if any, may be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law §2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess

of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the State, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If the awarded contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with the contract, unless and until OSC approval has been received.

Performance

The Contractor's performance will be assessed by the Corporation according to the achievement of The Contractor's contractual obligations in a timely and professional manner, as set forth in the resulting Contract. The Corporation will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.

Contractor warrants that its services shall be performed in accordance with applicable professional standards and that the Contractor shall correct, at no charge to the Corporation, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

Additional Services Requested

The Corporation may, at any time, by written notice, make changes or additions to work or services within the general scope of the contract resulting from this RFP (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of the contract, an equitable adjustment may be made in the price using the billing rates set forth in the contract, and the Contractor shall be notified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided however, that the Corporation, if it decides that the facts justify such action, may receive and act upon such claim as asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with this contract as modified.

Contractor Staff

Contractor staff assigned to work on this project shall be subject to approval by the Corporation. It is highly desirable that staff assigned to work on this project continue to work on this project until completion. The Contractor should notify the Corporation of any proposed changes in staff immediately. The Corporation has an absolute right and discretion to approve or disapprove any proposed changes in staff. The Corporation, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld.

The Contractor specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder.

The Agreement resulting from this RFP is intended to secure the professional services of the Contractor because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the Contractor.

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the State Project Manager. Approval shall not be unreasonably withheld upon receipt of written request to subcontract. All employees of the Contractor, or of its Subcontractors, who shall perform Services under this contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services on behalf of Contractor under the Agreement resulting from this RFP shall, in performing such Services, comply with all applicable Federal and State laws concerning employment in the United States.

IX. CONTRACTUAL REQUIREMENTS

This section contains additional information about the forms that are required to be included in each Bidder's submission pursuant to Section VI of this RFP, as well as information about ESD's procurement requirements.

i. Conflicts of Interest

Respondent must attest it has read, understood and will comply with the following provisions <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>. ESD shall have the right to disqualify any respondent to this RFP or terminate any contract entered into as a result of this RFP should ESD determine that the Respondent has violated any of these requirements.

- A. Gifts and Offers of Employment:** Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is

involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.

- B. Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.
- C. Disclosure of Ethics Investigations:** Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

ii. State Finance Law Sections 139-j and 139-k forms

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Bidders and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact persons listed above; the completion by Bidders of the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under "RFPs/RFQs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

Bidders must submit the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:

https://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf.

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by Bidders during the Restricted Period, make a determination of the responsibility of Bidders and make all such information publicly available in accordance with

applicable law. If a Bidder is found to have knowingly and willfully violated the State Finance Law provisions, that Bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible Bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

<http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicyJan2007.pdf>. All potential Bidders are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

iii. Vendor Responsibility Questionnaire

All Bidders to this RFP must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Respondent, if any, shall include clauses providing that the Respondent remain “responsible” throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

To assist in the determination of responsibility, ESD requires that all Bidders register in the State's Vendor Responsibility System (“Vend-Rep System”). The Vend-Rep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Bidders are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.

To enroll in and use the Vend-Rep System, see the System Instructions available at www.osc.state.ny.us/vendrep or go directly to the Vend-Rep system online at <https://portal.osc.state.ny.us>. For direct Vend-Rep System user assistance, the Office of the State Comptroller’s Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website (http://www.osc.state.ny.us/vendrep/forms_vendor.htm) and execute

accordingly pertaining to the company's trade industry. Per the website, Bidders are to "Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other)."

In addition, please see link to EO-192: <https://www.governor.ny.gov/news/no-192-executive-order-imposing-continuing-vendor-integrity-requirements-state-contracts>

iv. Iran Divestment Act

Every Proposal made to ESD pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by the Office of General Services. For further information and to view this list please go to:

<https://ogs.ny.gov/system/files/documents/2019/03/listofentities.pdf>

v. Executive Order 16

In accordance with New York State Executive Order 16 ("EO-16), all bidders must certify that they are in compliance with EO-16 prohibiting State Agencies and Authorities from Contracting with Businesses in Russia. EO-16 will remain in effect while sanctions imposed by the federal government are in effect.

"By submission of a bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is in compliance with EO-16."

The required certification for can be found at:

<https://esd.ny.gov/sites/default/files/EO16-certification.pdf> and must be signed and included in all Proposals.

vi. Executive Order 177

In accordance with New York State Executive Order 177, all bidders must certify that they are in compliance with the New York State Human Rights Law which prohibits discrimination and harassment based on a protected class, and which requires reasonable accommodation for persons with disability or pregnancy related conditions.

The required certification for can be found at:

<https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf> and must be signed and included in all Proposals.

vii. Non-Discrimination and Contractor & Supplier Diversity Requirements

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN

NEW YORK STATE LAW

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ESD is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of ESD contracts.

Business Participation Opportunities for MWBEs

For purposes of this solicitation, ESD hereby establishes an overall goal of **0** percent for MWBE participation. A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System (“NYSCS”), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity (“OCSD”) at OCSD@esd.ny.gov.

Equal Employment Opportunity Requirements

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions [**SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES**](#). The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the “Work”), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color,

national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its bid or proposal.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report (OCSD-3), in such format as shall be required by ESD on a QUARTERLY basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

The required forms can be found at the following web addresses:

Form OCSD-1: <https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>

Form OCSD-2: <https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan>

Form OCSD-3: <https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report>

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at OCSD@esd.ny.gov.

Diversity Practices

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Bidders is practical, feasible, and appropriate. Accordingly, Bidders shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (See **Appendix B**).

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. ESD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, ESD conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials.

The directory of New York State Certified SDVOBs can be viewed at:

<https://online.ogs.ny.gov/SDVOB/search>

Bidder/Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

viii. Encouraging the Use of NYS Businesses in Contract Performance Form

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible

here:

<http://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSESINCONTRACTPERFORMANCE.pdf>.

ix. Certification under State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Bidders to this solicitation must include in their Proposals a properly completed Form ST-220-CA (http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf), or an affidavit (http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

x. Schedule A

Following final selection of a Respondent, ESD will prepare a contract defining all project terms and conditions and the Respondent’s responsibilities in conformance with Schedule A. A sample can be found at: https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf

Please note Bidders do not need to complete the entire Schedule A with the submission of their Proposal. However, Bidders should still review these terms, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as successful Bidders will need to accept these terms prior to contract execution.

xi. Project Sunlight

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, “appearances” (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Bidders and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

xii. Insurance Requirements

Please note that upon selection for this Project, the selected Bidder will be required to demonstrate/provide the following insurance coverage protecting against any and all claims brought at the Licensed Premises. The Operator shall maintain or cause to be maintained Insurance of the following types and minimum amounts. Additional types and amounts of coverage may be required depending on the nature of the services to be performed under this Agreement or a sub-contract agreement:

1. Workers' Compensation Insurance:

(a) Workers' Compensation - Statutory Limits; Employer's Liability

(b) Employer Liability Limits:

1. \$1,000,000 Bodily Injury each Accident
2. \$1,000,000 Bodily Injury by Disease – Policy Limit
3. \$1,000,000 Bodily Injury by Disease – Each Employee

(c) Coverage shall include US Longshore and Harbor Workers' Compensation Act Insurance.

2. Commercial General Liability Insurance

(a) Limits of Liability

1. \$1,000,000 Each Occurrence
2. \$2,000,000 General Aggregate
3. \$2,000,000 Products/Completed Operations Aggregate
4. \$5,000 Medical Expense Limit (any one person)
5. \$50,000 Fire Damage Legal liability (any one fire)

(b) Coverage shall be on an Occurrence form and apply to bodily injury and property damage.

1. These limits shall apply on a "per project" basis.
2. Policy shall be written on form CG 00 01 or its equivalent and shall not include any exclusions or limitations other than those incorporated in the standard form.
3. Contractual Liability and Additional Insured Coverage shall not include any limitations for injuries to your own employees.
4. Products and Completed Operations Liability shall be maintained for three (3) years beyond completion and acceptance of the Project.
5. There shall be no XCU exclusion (Explosion, Collapse or Underground),
6. There shall be no "Labor Law" or other gravity related injuries exclusion.
7. Shall include coverage for Independent Contractors
8. Shall include Contractual Liability for liability assumed under this Contract and all other Contracts relative to the Project

9. Delete contractual exclusion, or any other policy exclusions, for work one within 50 Feet of a Railroad, Light Rail, Subway or similar tracked conveyance or provide endorsement CG2417-Contractual Liability-Railroads
10. Additional Insured Endorsements: All commercial general liability policies shall include the ESD and ECHDC as additional insureds pursuant to endorsements satisfactory to ESD and ECHDC.

3. Automobile Liability Insurance

(a) \$1,000,000 Bodily Injury/Property Damage Combined Single Limit

(b) Commercial Automobile Liability Insurance to cover all vehicles including owned, non-owned and hired.

4. Excess Liability

Limits of Liability: \$25,000,000

Coverage should be at least as broad as and follow form of Employer's Liability, General Liability, and Auto Liability. Policy to include a drop down provision over primary policies.

5. Security Guards

Limits of Liability: \$1,000,000 Per Occurrence / \$10,000,000 Aggregate

Operator shall maintain or cause to maintain coverage for security personnel.

6. Event Coverage

Limits of Liability: \$25,000,000

Operator shall maintain or cause to be maintained, coverage for events produced by third parties or in-house produced events.

7. Liquor Liability

Limits of Liability \$25,000,000

Operator shall maintain or cause to be maintained, coverage for in-house beverage facilities, third party events, and any other offerings.

8. Crime/Fidelity

Employee theft	\$10,000,000
Forgery or alteration	\$10,000,000
Theft, robbery and burglary (inside and outside premises)	\$10,000,000
Third-party off Premises	\$10,000,000
Computer fraud	\$10,000,000
Money orders and counterfeit paper currency	\$10,000,000

Single loss deductible shall not be more than \$25,000.

Certificates of Insurance - Certificates of insurance reasonably acceptable to the ESD/ECHDC shall be filed with the ESD/ECHDC within ten (10) days after award of the contract to the Operator and prior to commencement of the Work. These certificates and the insurance policies shall contain a provision that coverages afforded under the policies will not be materially modified, cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to ESD/ECHDC. The provisions of this Section shall apply to all policies of insurance required to be maintained by the Operator pursuant to the Contract Documents.

Other Insurance - Any type of insurance or any increase of limits of liability not described in this section which the Operator requires for their own protection or on account of any statute shall be their own responsibility and at their own expense.

As respects General Liability, the additional insured endorsements shall be on a form at least as broad as ISO Forms CG2010 07 04 & CG2037 07 04 combined and shall not include any exclusions that limit the scope of coverage beyond that provided to the named insured. This requirement applies to all policies under which ESD & ECHDC, are required to be named as Additional Insureds. The additional insured coverage shall include completed operations coverage for the Additional Insureds for a period of not less than 36 months after completion of the project.

- (a) Operator shall, by specific endorsement to its primary commercial general liability policy, and automobile liability policy, cause the coverage afforded to the Additional Insureds thereunder to be primary to and not concurrent with any other valid and collectible insurance available to the Additional Insureds.

- (b) Operator shall, by specific endorsement to its umbrella/excess liability policy, cause the coverage afforded to the Additional Insureds thereunder to be first tier umbrella/excess coverage above the primary coverage afforded to the Additional Insureds and not concurrent with or excess to any other valid and collectible insurance available to the Additional Insureds whether provided on a primary or excess basis.
- (c) Operator shall, by specific endorsement to its primary and umbrella/excess liability policies, cause the coverage afforded thereunder to include blanket written contractual liability covering all indemnity agreements;
- (d) Operator shall, by specific endorsement to its primary and umbrella/excess liability policies, cause the coverage afforded thereunder to include products liability and completed operations, with the provision that coverage shall extended for a period of at least 36 months after completion of the project;
- (e) Operator shall, by specific endorsement to its primary and umbrella/excess liability policies, provide that defense costs are not be considered as damages so as to erode the policy limits required under sections 1 – 5 above.
- (f) All policies shall contain a waiver of subrogation in favor of ESD and all others as required by contract.
- (g) Deductibles and Self-Insured Retentions Any deductibles or self-insured retentions must be declared to and approved by ESD.
- (h) The Operator shall require all subcontractors to include Additional Insured endorsement CG 2038 04 13 and CG 20 37 07 04 with respect to General Liability.
- (i) Certificates evidencing the foregoing insurance coverages must be furnished by Operator to, and be approved by ESD, before the proposal can be considered. Certificates, Notices of Cancellation, or changes, etc., are to be sent by Operator, directly to ESD at 633 Third Ave., Contracts Administration, 35th Floor, New York, NY 10017. Operator or Operator's agent and Operator's insurance carrier(s) must reconcile all policy requirements to the satisfaction of ESD. Operator shall provide certified copies of all policies required under this OR within 15 days after receipt of request by the Owner for such information.

No party subject to the provisions of this contract shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein.

- A. All insurance required to be procured and maintained must be procured from insurance companies licensed to do business in the State of New York and rated at least A- VII by A.M. Best and Company or meet such other requirements as are acceptable to the ESD/ECHDC.
- B. Should the Operator fail to provide or maintain any insurance required by this contract, the ESD/ECHDC may, after providing written notice to the Operator, purchase insurance complying with the requirements of this Article and charge back such purchase to the Operator.
- C. At any time that the coverage provisions and limits on the policies required herein do not meet the provisions and limits set forth above, the Operator shall immediately cease work on

the Project. The Operator shall not resume work on the Project until authorized to do so by the ESD/ECHDC. Any delay or time lost as a result of the Operator not having insurance required by this Article shall not give rise to a delay claim or any other claim against the ESD/ECHDC or the Client.

- D. Notwithstanding any other provision in this Article, the ESD/ECHDC may require the Operator to provide, at the expense of the ESD/ECHDC, any other form or limit of insurance necessary to secure the interests of the ESD/ECHDC.
- E. The Operator shall secure, pay for, and maintain Property Insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment, staging towers, and forms owned, borrowed or rented by the Operator. The requirement to secure and maintain such insurance is solely for the benefit of the Operator. Failure of the Operator to secure such insurance or to maintain adequate levels of coverage shall not render the Additional Insureds or their agents and employees responsible for any losses; and the Additional Insureds, their agents and employees shall have no such Liability.
- F. Neither the procurement nor the maintenance of any type of insurance by the ESD/ECHDC or the Operator shall in any way be construed or deemed to limit, discharge, waive or release the Operator from any of the obligations or risks accepted by the Operator or to be a limitation on the nature or extent of said obligations and risks of the Operator.
- G. The Contract may, at the sole option of the ESD/ECHDC, be declared void and of no effect if the Operator fails to comply with the provisions of this Article.
- H. The Operator and its Trade Operators shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of the ESD/ECHDC and of the insurance companies issuing such policies.

An individual certificate (including hold harmless) must be provided to each of the following organizations: New York State Urban Development Corporation d/b/a as Empire State Development (ESD), the Erie Canal Harbor Development Corporation (ECHDC), the State of New York, the Buffalo Sewer Authority, the New York State Department of Transportation (NYSDOT), the City of Buffalo and the Ralph C. Wilson Jr. Explore & More Children's Museum.

New York State Urban Development Corporation d/b/a Empire State Development (ESD) must be named as additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability and Auto Liability. All policies above should include a waiver of subrogation in favor of ESD.

xiii. W-9 Form

Provide a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>), submit with proposal.